

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA J LOHSE
Claimant

MD AUTO CLINIC INC
Employer

APPEAL 19A-UI-03885-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/07/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the April 30, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 5, 2019. Claimant did not answer at the number she provided for the hearing and did not participate. Employer participated through president/owner Mark Hodges. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 4, 2018. Claimant last worked as a full-time office assistant. Claimant was separated from employment on April 6, 2019, when she was terminated.

Employer has a policy stating as follows:

At MD Auto Clinic we have to commit ourselves to the 100% satisfaction of our customers. A company's reputation is built on the actions of its people and our commitment to ethical behavior is reflected in our exemplary reputation. Reputation is a delicate attribute and can be easily damaged. As an employee of MA [sic] Auto Clinic Inc. we each have committed to comply with all applicable laws and regulations in the states where we do business and further, to hold ourselves to the highest business conduct standards.

We depend on our employees to conduct business in a lawful and ethical manner at all times. Unethical and illegal acts can have serious consequences and we expect our

people to speak up if they witness or suspect unethical or illegal behavior. You have an obligation to report your concerns to your manager or the President/CEO.

Claimant was aware of the policy.

Claimant was habitually tardy and performed poorly throughout her employment. Employer gave claimant two written warnings and one suspension for her tardiness. Claimant continued to be tardy and have performance issues, even after receiving the discipline. Nevertheless, employer allowed claimant to remain employed.

During her employment, claimant lived in a property owned by president/owner Mark Hodges. Hodges evicted claimant from the property for non-payment of rent.

On April 5, 2019, claimant was supposed to be cleaning the property from which she had been evicted. Claimant was present at the property with her significant other. Claimant's significant other had an active warrant for his arrest. An Iowa State Trooper and a bounty hunter contacted Hodges that evening, seeking permission to enter the property to arrest claimant's significant other. Hodges granted them permission to enter the property. The State Trooper and bounty hunter broke a door on the property because claimant's significant other did not come out willingly. Claimant's significant other was arrested on charges of drug possession. Law enforcement kept Hodges updated on the status of events throughout the night.

Also on the evening of April 5, 2019, Hodges learned that claimant had been arrested two weeks earlier for possession of illegal drugs. A former customer of employer saw the news of the arrest online and informed Hodges of what he learned. Hodges does not know any other details regarding the arrest, other than the fact that claimant missed one day of work two weeks earlier, presumably because she was incarcerated.

On April 6, 2019, Hodges spoke with manager Dave Lohse and they agreed to terminate claimant. Dave Lohse terminated claimant the same day.

Employer is unaware of whether claimant has been convicted or pleaded guilty of the charge for which she was arrested.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer terminated claimant after learning of her arrest and because of the circumstances surrounding her boyfriend's arrest. While claimant had very poor attendance throughout her employment and had many other performance issues as well, employer did not terminate her for those reasons. Claimant continued to be tardy and have performance issues, but it was not until the events of April 5, 2019, that employer decided to proceed with termination.

Employer has a policy requiring employees to abide with all laws and regulations. Claimant was arrested and charged with drug possession, but even so, employer has not established claimant violated its policy prohibiting illegal conduct. Employer did not present any evidence supporting a finding that claimant committed the underlying criminal conduct for which she is accused. Employer did not present any evidence that claimant has pleaded guilty or has been convicted of the charged crime. Disqualifying conduct cannot be predicated on a mere arrest unsupported by a conviction or other credible evidence of the claimant's intentional conduct. *Irving v. Emp't Appeal Bd.*, No. 15-0104, 2016 WL 3125854 (Iowa June 3, 2016)(citing *In re Benjamin*, 572 N.Y.S.2d 970, 972 (App. Div. 1991)(per curiam)).

Employer also has a policy requiring employees to report suspicion of criminal behavior. Claimant's boyfriend was arrested and was also charged with drug possession. But here again, the boyfriend had not been convicted at the time of the termination and employer presented no evidence that claimant was aware her boyfriend was engaging in illegal activity and failed to report it.

Hodges is understandably distressed by the issues claimant caused him in his role as her landlord. However, those events happened because of Hodges' landlord-tenant relationship with claimant and are not related to the workplace or claimant's employment. Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

While the employer may have been justified in discharging claimant, it has not met its burden of proof in establish disqualifying job-related misconduct. Nothing in this decision should be interpreted as a condemnation of the employer's right to discharge claimant. The employer had a right to make business decisions as it determined were in its best interests. The analysis of unemployment insurance eligibility however, does not end there. This decision simply holds that the employer did not meet its burden of proof to establish it terminated claimant for job-related misconduct that justifies her disqualification from receiving unemployment insurance benefits.

Because the claimant is not disqualified from receiving benefits, the issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The April 30, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
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Decision Dated and Mailed

cal/scn